THE LAW LEDGER

The Fortnightly e-Journal

DELHI POLICE ACADEMY

CRIMINAL APPEAL Arising out SLP (Crl.) No. 5518 of 2025
Date of Judgement: 13/10/2025

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> –THE SUPREME COURT

RAHUL AGARWAL .....APPELLANT
VERSUS
STATE OF WEST BENGAL .....RESPONDENT

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FACTS OF THE CASE:

The facts are that a young married woman of 25 years of age died on 16.02.2021, which led to an allegation of harassment and torture at the matrimonial home and counter allegation that the deceased together with her parents misappropriated cash and jewellery belonging to the family of the husband. A cousin of the husband of the deceased filed a complaint before the police in which the deceased's father and mother were arrayed as accused. Upon investigation the Investigating Officer (I.O) was informed that the 2nd respondent acted as the agent of the father of the deceased and threatened a witness who alleged that he was privy to the extortion demand made by the father through the 2nd respondent. The I.O hence required the 2nd respondent to be subjected to a voice sample test for which collection of the voice sample was sought before the jurisdictional Magistrate's Court and the jurisdictional Magistrate allowed the I.O's application. The second respondent challenged the same before the High Court and the High Court by the impugned order set aside the order of the Magistrate finding that a similar question was referred to a Larger Bench. Rahul Agarwal, who was the appellant and the original complainant in the case, filed a criminal appeal before the Apex Court, arising from a Special Leave Petition, challenging the order of the Calcutta High Court.

ISSUES ADVANCED:

1. Whether a Judicial Magistrate had the power under the Code of Criminal Procedure, 1973 (CrPC) to order the collection of a voice sample when the CrPC did not explicitly provide for it.
2. Whether such a direction could be given to both an accused person and a witness.
3. Whether forcing someone to provide a voice sample violated the right against self-incrimination under Article 20(3) of the Indian Constitution.
4. Whether a High Court could disregard a Supreme Court precedent from a larger bench because a reference on the same issue was pending before another larger bench.



[Learned Counsel appearing for the 2nd respondent, (whose voice sample is to be taken) vehemently argued that the order was passed when the Criminal Procedure Code (Cr.P.C.) was in force and though Section 349 of the Bhartiya Nagarik Suraksha Sanhita (BNSS), 2023 empowered the Magistrate to pass an order directing a person to provide a voice sample, the Cr.P.C. does not have any such provision. It is this issue which has been referred for consideration before the Larger Bench.]

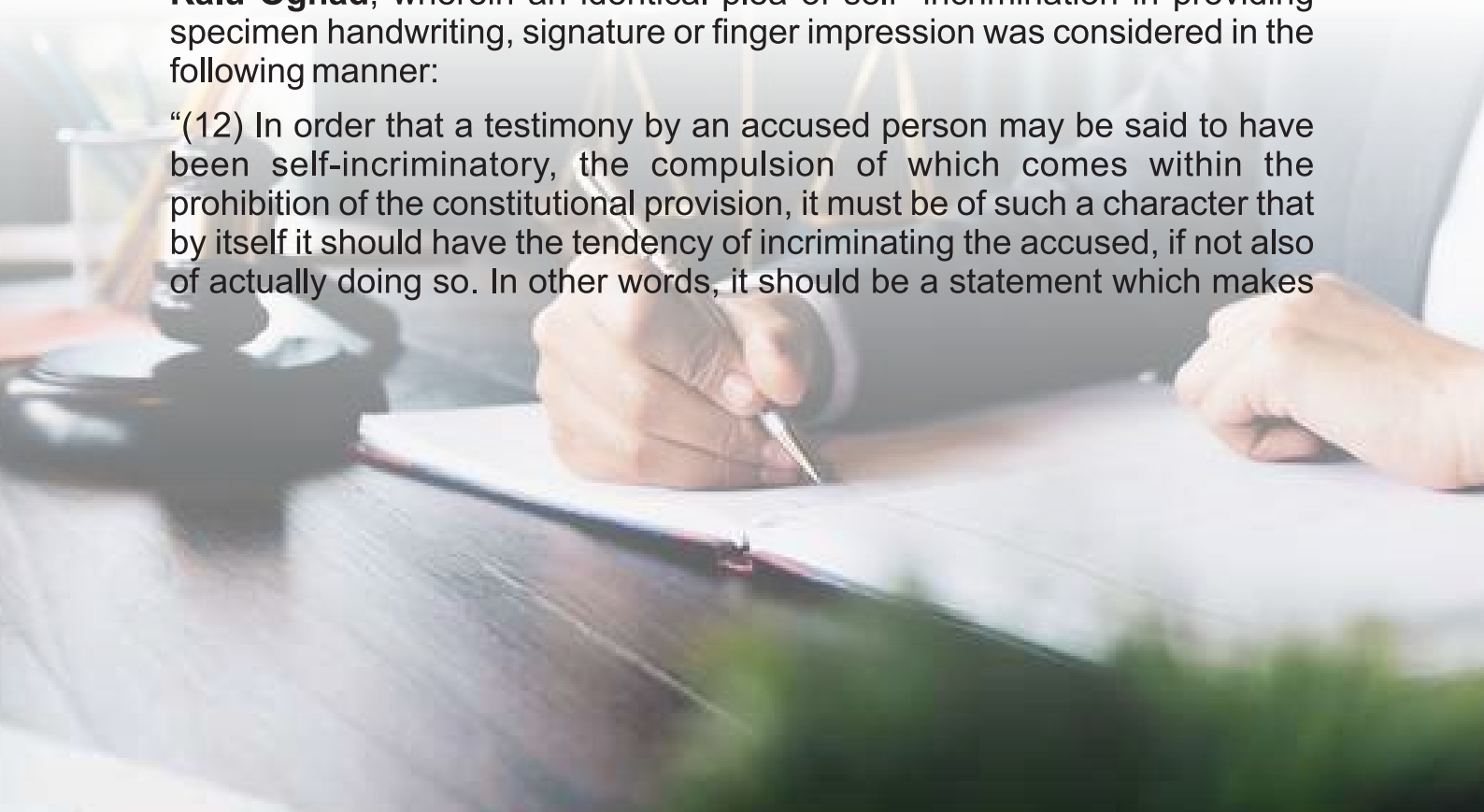
JUDGEMENT

The Hon'ble Supreme Court held that the judgment of High Court was erroneous in its order. The Court observed that:

PARA 6. The reference, as we see from the questions extracted in the impugned order, was whether the direction of this Court enabling the Magistrate to pass an order directing the accused to provide a voice sample would apply in the case of a witness. In the present case, the question is raised especially on the ground that it would lead to infringement of the right of the witness under Article 20(3), which on comparison of the voice sample could result in arraigning the witness as an accused.

PARA 7. The question squarely arose in **Ritesh Sinha Vs. State of Uttar Pradesh & Anr.** (Crl. Appeal No.2003 of 2012) dated 02.08.2019 based on which the reference was made. This Court was concerned with a conversation between two accused who were alleged to have collected money from different people on the promise of jobs, which did not materialise. The specific question raised was with respect to the Magistrate not being empowered to pass an order directing furnishing of a voice sample. This Court referred to the judgment in **State of Bombay Vs. Kathi Kalu Oghad**, wherein an identical plea of self- incrimination in providing specimen handwriting, signature or finger impression was considered in the following manner:

"(12) In order that a testimony by an accused person may be said to have been self-incriminatory, the compulsion of which comes within the prohibition of the constitutional provision, it must be of such a character that by itself it should have the tendency of incriminating the accused, if not also of actually doing so. In other words, it should be a statement which makes



the case against the accused person at least probable, considered by itself. A specimen handwriting or signature or finger impressions by themselves are no testimony at all, being wholly innocuous, because they are unchangeable; except, in rare cases where the ridges of the fingers or the style of writing have been tampered with. They are only materials for comparison in order to lend assurance to the Court that its inference based on other pieces of evidence is reliable. They are neither oral nor documentary evidence but belong to the third category of material evidence which is outside the limit of 'testimony'." xxx xxx xxx "(32)..... It has to be noticed that Article 20(3) of our Constitution does not say that an accused person shall not be compelled to be a witness. It says that such a person shall not be compelled to be a witness against himself. The question that arises therefore is: Is an accused person furnishing evidence against himself, when he gives his specimen handwriting, or impressions of his fingers, palm or foot? The answer to this must, in our opinion, be in the negative."

PARA 8. Following the aforesaid precedent, it was held in Ritesh Sinha that despite absence of explicit provisions in Cr.P.C., a Judicial Magistrate must be conceded the power to order a person, to give a sample of his voice for the purpose of investigation for a crime. We specifically note that this Court had not spoken only of the accused and specifically employed the words 'a person', consciously because the Rule against self-incrimination applies equally to any person whether he be an accused or a witness. It was also directed that till explicit provisions are incorporated in the Cr.P.C., the Judicial Magistrate will be so empowered by virtue of the said judgment. The issue was also pending with the Government and with the advent of the BNSS, it has been specifically incorporated under Section 349.

PARA 9. We need not hence consider the question as to whether it is the Cr.P.C. or the BNSS which would be applicable to the present case. If it is the Cr.P.C., the three Judge Bench decision in Ritesh Sinha permits the same on the identical principle adopted by this Court in Kathi Kalu Oghad to permit furnishing of handwriting, signature and finger impressions. The said sampling is similar to voice sampling, as now possible by reason of the advancing technology. If it is the BNSS that is applicable, then there is a



specific provision enabling such sampling. The reasoning was also that mere furnishing of a sample of the fingerprint, signature or handwriting would not incriminate the person as such. It would have to be compared with the material discovered on investigation, which alone could incriminate the person giving the sample, which would not fall under a testimonial compulsion, thus not falling foul of the rule against self-incrimination.

PARA 10. We hence do not find any reason to uphold the impugned order and set it aside. The 2nd respondent shall act in accordance with the order passed by the Magistrate.

Key Aspects of the Judgment:

Magistrate's Authority: The Supreme Court affirmed the power of a Judicial Magistrate to compel any individual, including an accused person or a witness, to furnish a voice sample for investigative purposes.

Constitutional Validity: The Court determined that directing a person to provide a voice sample does not infringe upon the fundamental right against self-incrimination enshrined in Article 20(3) of the Indian Constitution.

Nature of Evidence: Voice samples were categorized as "material or physical evidence," analogous to fingerprints or handwriting, and not as "testimonial evidence" that would be protected under Article 20(3).

Precedent and Law: The judgment cited the precedent of Ritesh Sinha Vs. State of Uttar Pradesh (2019) and acknowledged that Section 349 of the Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023, now explicitly grants this power.

The Supreme Court's ruling overturned the High Court's order and reinstated the Magistrate's directive, permitting the collection of the voice sample.

